

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS  
CENTRAL DIVISION

HEWLETT-PACKARD COMPANY and  
HEWLETT-PACKARD  
DEVELOPMENT COMPANY, L.P.

Plaintiffs,

v.

ICL NETWORK SOLUTIONS (HK),  
LIMITED,

Defendant.

Civil Action No.

05-40153 FDS

---

**AFFIDAVIT OF NICK KOSTOFF IN SUPPORT OF PLAINTIFFS'  
APPLICATION FOR TEMPORARY RESTRAINING ORDER AND  
ORDER TO SHOW CAUSE**

---

I, NICK KOSTOFF, hereby depose and state as follows:

1. I am a Hardware Engineer employed by Hewlett-Packard Company. I am headquartered in Houston, Texas. I make this statement in support of Plaintiffs' Application For A Temporary Restraining Order And Order To Show Cause. Except as otherwise indicated in this affidavit, the facts stated herein are known to me of my own personal knowledge and if called upon to do so, I could and would testify thereto.

2. As a Hardware Engineer, I am the lead member of a group at Hewlett-Packard that qualifies and develops "firmware" for Hewlett-Packard hard drives. Firmware is the read-only computer program that provides instructions for how the hard drive behaves in response to commands. The firmware also provides a basis for identification of a hard drive and its particular specifications. My group deals with Hewlett-Packard's hard drive suppliers and provides the specifications and validations of the firmware that suppliers then install on these hard drives for Hewlett-Packard. Hewlett-Packard's firmware is unique to Hewlett-Packard and contains features that are not present in the firmware used in generic hard drives or hard drives sold by other companies.

3. In late August 2005, I received from my colleague Lisa McPherson two hard drives: one that purported to be a HP 36GB U320 15k drive (HP Part No. 286776-B22), bearing the purported Serial Number 52Y02525, and one that purported to be a HP 72GB U320 15k drive (HP Part No. 287778-B22), bearing the purported Serial Number D2BVSNCK. I am informed and believe that these drives came from a company called ICL Network Solutions (HK) Limited ("ICL Network") in Hong Kong.

4. "36GB" is supposed to indicate that a hard drive has 36 gigabytes of storage space; "72GB" is supposed to indicate that a hard drive has 72 gigabytes of storage space; "U320" is supposed to indicate that the drive can transmit data at a rate of 320 megabytes per second; and "15k" is supposed to indicate that the drive operates at a speed of 15,000 revolutions per minute.

5. I examined these two hard drives and determined that they are not genuine Hewlett-

Packard hard drives. My determination is based on several indicators, as set forth below.

6. For the hard drive that purports to be a HP 36GB U320 15k drive, I performed a “standard inquiry” on the drives asking the drives to report data about themselves. In response, the drives reported data indicating that it was an IBM drive, contrary to the product label on the drive indicating it was a Seagate drive. I also performed a second test on the drive and looked for internal “mode pages.” All drives that use Hewlett-Packard firmware are loaded with certain mode pages. The “mode pages” are missing or inconsistent with HP specification, and the drive is missing other Hewlett-Packard specific vital product data pages. The lack of proper mode pages and HP specific vital product data pages confirm that this drive is not a genuine Hewlett-Packard drive. From my examination of this drive, I have determined that this drive is only capable of operating at a data transfer rate of up to 160 megabytes per second—that is, it is actually a U160 or ultra 160 drive. The labeling, however, indicates that the drive is a U320 drive. In addition, the drive is a 10k RPM, *not* a 15k RPM, as indicated on the label. This is a false indication, and the fact is that these drives are only capable of transferring data at a rate half as fast as purported. Thus, not only is the drive counterfeit in terms of the Hewlett-Packard indications, but it also is of significantly lesser performance than the seller claimed.

7. For the hard drive that purports to be a HP 72GB U320 15k drive, I performed a standard inquiry on the drives asking the drives to report data about themselves. I also performed a second test on the drive and looked for internal “mode pages.” The HP specific “mode pages” are missing, and the drive is missing other Hewlett-Packard specific vital product data pages. The lack of proper mode pages and HP specific vital product data pages confirm that this drive is not a genuine Hewlett-Packard drive. Based on my examination of the firmware on this drive and a physical examination of the hard drive, this is a Maxtor drive. While the product label

indicates that this drive is a 15k drive, my physical examination of the drive reveals that it is in fact a 10k drive. Thus, not only is it counterfeit, but it does not perform as labeled.

Signed under the pains and penalties of perjury this 1<sup>st</sup> day of September, 2005

  
\_\_\_\_\_  
NICK KOSTOFF